

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.389/2003

Friday this the 29th day of October, 2004.

C O R A M

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

Indira Vinod,
Vatika,
Palapuram P.O.,
Ottapalam - 3,
Palakkad District

: Applicant

[By Advocate Mr.K.P.Dandapani]

Vs.

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
2. The Joint Commissioner (Vigilance),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. The Educational Officer (Vig),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
4. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office,
Bangalore.
5. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office,
Chennai.
6. The Principal,
Kendriya Vidyalaya,
Palapuram,
Ottapalam,
Palakkad

: Respondents

[By Advocate M/s Iyer & Iyer]


The application having been heard on 14.09.2004, the Tribunal on 29.10.2004 delivered the following :

O R D E R

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant joined as primary teacher in Kendriya Vidyalaya Sangathan in 1977 and promoted as Trained Graduate Teacher in 1988 and again promoted as Post Graduate Teacher and

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was working in Palapuram from 1992 onwards. She applied for 'No Objection Certificate' for obtaining passport (official) vide application dated 09.02.1999 (Annexure A-1) which was issued on 18.05.1999. She intimated on 29.06.1999 about going abroad to join her husband and it is averred that on 29.07.1999 an application for 178 days (extraordinary leave) was sought with effect from 02.08.1999 and the applicant left for London to join her husband as the leave sought was not rejected. Thereafter in December, 1999 she had a miscarriage at London and was bed-ridden. The respondents vide Annexure A-6 dated 23.12.1999 directed the applicant to report for duty latest by 20.01.2000. The applicant sought extension of leave for another 45 days on medical grounds alongwith medical certificate on 19.01.2000 and again sought extension of leave on 18.03.2000. On 23.03.2000 the respondents required the applicant to produce Medical Certificate and copies of passport showing Visa entries (Annexure A-9). Applicant submitted all required information and records on 06.04.2000. The respondents again required the applicant to report for duty by 28.08.2000 (Annexure A-11). Leave was sought to extend leave on medical grounds as the applicant had developed acute back pain and unable to travel. On 01.08.2002, the applicant reported for duty but not permitted. In August, 2002 the applicant approached the 5th respondent who served a copy of letter dated 27.04.2001 regarding suspension of her lien provisionally and then a letter confirming the suspension of lien on 30.07.2001. An appeal was filed on 05.08.2002 against orders of suspension and confirmation of suspension of lien (Annexure A 13). The appeal was rejected on 29.11.2002


reiterating that the applicant did not respond to notice of suspension of lien. Again on 04.12.2002 a detailed representation was submitted which was rejected on 25.03.2003. Aggrieved by the said inaction on the part of the respondents the applicant has filed this Original Application seeking the following reliefs:-

- a, Call for the records leading to Annexure A 12, A 14 and A 16 and quash the same as illegal, arbitrary, capricious;
- b, direct the respondents to reinstate the applicant immediately as PGT (English) at Kendriya Vidyalaya, Ottapalam;
- c, direct the respondents to sanction EOL as prayed for by the applicant from 01.08.1999 to 01.08.2002;
- d, declare that the provisions contained under Article 81 (d) as unconstitutional, illegal and unsustainable;
- e, declare that the applicant was availing eligible leave for the aforesaid period and she is entitled to be continued in service being a permanent PGT under the respondents;
- f, such other reliefs that the Hon'ble Tribunal feel deem fit in the circumstances of the case;
- g, award cost of the application.

2. The 5th respondent has filed a detailed reply statement on his behalf and on behalf of all the respondents contending that the Kendriya Vidyalaya Sangathan is an autonomous body registered under the Department of Higher and Secondary Education, Ministry of Human Resource Development, Government of India. The Sangathan has its own regulation of affairs of Kendriya Vidyalaya Sangathan employees as per the terms of appointment. Chapter VIII deals with disciplinary matters of

staff. Annexure R-1 is a copy of the provisions of the Education Code. Article 81(d) of the code was inserted by the Board of Governors at its meeting held on 17.07.2000, as per the powers conferred by Resolution 22 of the Memorandum and Rules of Kendriya Vidyalaya Sangathan. Insertion of the provision in the Education Code was duly communicated to all concerned, to all Regional Offices and the Principals with a request to circulate among teachers and staff. The increasing tendency on the part of the teachers, particularly ladies to be absent from duties on the slightest pretext which was causing indiscipline and deterioration in academic standards and normal disciplinary proceedings under CCS (CCA) Rules, 1965 were found to be insufficient. CCS(CCA) Rules were dilatory and inadequate to address the magnitude of the problems of unauthorised absence of the staff. In order to give uninterrupted education to the children and thereby sustaining the public confidence in the Institution it was deemed essential to incorporate the said Article in the Rule. The rules regulating the terms and conditions of appointment is invariably added to the offer of appointment, thereby the employee enters into a valid contract with the Sangathan, An employee cannot later make a unilateral disclaimer. The removal of the applicant from service was not caused by disciplinary proceedings under CCS (CCA) Rules but as per the Sub Clause (6) of Article 81 (d) of Education Code for Kendriya Vidyalaya which was adopted in public interest and administrative exigencies.


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3. The applicant left the country on 07.08.1999 without taking prior permission from the competent authority, though an application for sanctioning EOL for 178 days was submitted on 29.07.1999. The Principal and Assistant Commissioner directed the applicant to report back for duty which was not complied with by the applicant. A show cause notice dated 27.04.2001 was issued to the applicant advising her to make written representation as to "why the provisional loss of lien is not to be confirmed." As she did not comply with the instructions conveyed in the notice, the authority confirmed the loss of lien and the Appellate Authority further confirmed the same.

4. Permission was granted to the applicant to obtain fresh passport vide letter dated 18.05.1999 (Annexure R-4). Mere filling up of column No.9 of the application for obtaining NOC simply stating that "As passport has not yet been made, I have not applied for leave " without even giving details regarding the proposed date of overseas travel does not mean that an employee has been granted permission to go abroad. The applicant's letter dated 29.06.1999 addressed to the Principal, Kendriya Vidyalaya, Ottapalam was only a mere intimation of the applicant to join her husband posted in the High Commission of India, London without mentioning the details of the leave period. She did not submit her request in the prescribed format and had not obtained permission of the competent authority before proceeding abroad. Mere submission of application does not mean that one's request for leave has been acceded to and without obtaining the NOC leaving the HQrs amounts to total indiscipline. The authority competent to

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sanction such leave decided not to sanction any leave to the applicant due to administrative reasons and directed to report for duty latest by 20.01.2000. Instead, she submitted a leave application extending her leave period initially for 45 days from 18.01.2000 and thereafter for another six months on purported medical grounds. The endorsement on the passport indicated that visa was endorsed on 02.07.1999 (Annexure R-6). There was ample time to obtain the permission of the Assistant Commissioner but she preferred not to do so. The applicant's statement in Annexure A-4 is a mere intimation of her intention. Finding non compliance of the memo/order dated 23.03.2000 of the competent authority, the applicant was given another chance to report at the Regional Office by 28.08.2000. But the applicant chose to remain in London without utilising that opportunity. Annexures R-7 and R-7a letters sent by the applicant will show that the applicant actually stayed back at London for the education of her son in London University and her daughter in a London School and the claim regarding illness was only a ruse set up to mislead the administration. Her absence was not for good and sufficient reasons. She had abandoned the employment for which she was paid for. The stay for three years at London till the expiry of visa was premeditated,

5. The notice dated 27.04.2001 sent by registered post with acknowledgement to her last known address 22, Robson Road, West Norwood, London SE 27 9LA Tele. 0181 781 5954 was not returned undelivered. Therefore, the statement of the applicant that she had not received the show cause notice dated 27.04.2001 is


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not acceptable. The applicant ought to have made arrangements to receive the correspondence at her new address. The appeal filed by the applicant was considered and confirmed the findings of the Disciplinary Authority. The revision petition dated 04.12.2002 was disposed of without assigning any reason. As per Clause 12 under Article 81 (d) of the Education Code, the order of the Appellate Authority shall be final and shall not be called into question by way of any further application/petition for revision/review etc. The applicant is not contesting against the terms and conditions but challenging the newly amended Article 81 (d) in view of the fact that it was held as not unconstitutional and violative of Article 311 of the Constitution of India by various Courts and Tribunals in India. There is no question of preferring her case for second medical opinion without sanctioning her earlier leave and it was not practicable when the applicant was not stationed in India.

6. The applicant had filed rejoinder contending that the codal provisions have no statutory force. It is only an executive order and hence any amendment to the same cannot have any retrospective effect. The records will show that even on 31.07.2001 an order was communicated in the former address 22, Robson Road, West Norwood, London. From Annexure R-7 dated 17.08.2000, it is clear that the applicant had intimated that she was moving her residence shortly and all the correspondence thereafter had to be made in the new address mentioned therein which was received by the Assistant Commissioner. Subsequently the correspondence should not have made in that address. The

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applicant further contended that she had enclosed her passport in order to make it clear that her intention was to go abroad to join the spouse. Clause 15 of Code (1) makes it mandatory that if the leave application received on the ground of medical or otherwise, the competent authority should accept or reject it in writing. Reply to the additional document was filed by the applicant reiterating the same contention.

7. Msr. Sumathi Dandapani appeared for the applicant and Mr. Paul Abraham Vakkanal of M/s Iyer & Iyer appeared for respondents. Learned counsel for applicant submitted that it is because of non communication of show cause notice in the given address by the respondents she could not reply or comply with the notice. Medical certificate submitted by the applicant from the authorised Doctor of the Embassy will show that her claim was genuine and even according to the Education Code relied upon by the respondents the provisions are not properly complied with and therefore, the impugned orders are faulted and they are to be set aside.

8. Shri Paul Abraham Vakkanal, learned counsel for respondents argued that the applicant is adopting a hide and seek game without getting approval and sanction of leave. She proceeded to London at her risk and cause and all further communication that she had actually received are not responded for obvious reasons. The absence for three years from the station has put the students and Institution to hardship and therefore the provisions of Education Code was evoked in the best interest of public and the Institution and there is no merit in the Original Application and the OA to be dismissed.

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9. We have heard the learned counsel on both sides and given due consideration to the evidence and material brought on record. For better clarification, we have called for the records pertaining to this case and perused the same.

10. There cannot be any quarrel to the contention of the respondents that Kendriya Vidyalaya Sangathan is an autonomous body registered under the Department of Higher and Secondary Education, Ministry of Human Resource Development, Government of India. The Sangathan has power to make its own rules and regulations and therefore, the Education Code Annexure R - 1 with special reference to Article 81 (d) of the Code cannot be said to be unconstitutional. Every Institutions to maintain the Institutional interest have the right to incorporate enacting rules for their proper maintenance of the discipline of academic standards especially when it happens to a Institution of Education. On perusal of this said Code we find that the provisions of the Code is not repugnant or override the provisions of CCS (CCA) Rules nor Fundamental Rules. Both the parties rely on the provisions of the Code for their rescue.

11. We will have to evaluate the entire case with this perspective. The contention of the respondents is that the applicant had gone abroad to join her husband without sanction of leave and not responded to the show cause notice and thus the period of absence was wilful, predetermined and evoking

Section D of the Education Code. They have passed the impugned orders suspending her lien to the post. For better elucidation, it is profitable to quote Clause 3.6 and 3.7 of Article 81 (d), which deals with Voluntary Abandonment of Service as follows :-

- 3(6) " If the appointing authority is satisfied after such hearing that the employee concerned has voluntarily abandoned his service in terms of the provisions of Sub-Clause (1) of this Article, he shall pass an order confirming the loss of employee's lien on his post, and, in that event, the employee concerned shall be deemed to have been removed from the service of the Kendriya Vidyalaya Sangathan with effect from the date of his remaining absent. In case the appointing authority is satisfied that the provisions of Sub-Clause (1) of Clause (d) of this Article are not attracted in the facts and circumstance of the case, he may order re-instatement of employee to the post last held by him, subject to such directions as he may give regarding the pay and allowances for the period of absence."
- 3(7) " Appellate Authority : An employee aggrieved by an order passed under sub-clause (6) of this Article may prefer an appeal to the appellate authority as notified by the Kendriya Vidyalaya Sangathan from time to time."

Therefore, there is no doubt that as per the said Code the respondents are entitled to proceed against such employees. On the other hand, learned counsel for applicant brought to our attention to Clause 15 of the Education Code which reads as follows :-

Power to issue instructions :

1. " When an employee applied for leave, medical or otherwise, the competent authority to sanction such a leave should invariable provide in writing when such leave is refused or not sanctioned adducing the grounds of refusal.

2. Employees seeking leave on prolonged medical grounds may be referred to the Medical Board at the Regional Office nearest to the residence of the employee so that they do not get any succor on plea of inability on health grounds.
3. The disciplinary authority while examining the representation on show-cause notice should preferably give a personal hearing to the employee before issue of the final order of loss of lien on the post, thereby terminating the service of that employee. "

12. On going through the said provisions, we are of the view that the Commissioner, Kendriya Vidyalaya Sangathan who is empowered to issue instructions, had made the above said instructions supplementarily denotes that when an employee applied for leave, medical or otherwise, the competent authority to sanction such a leave should invariably provide in writing when such a leave is refused or not sanctioned adducing the grounds of refusal. The employee seeking leave may be referred to the Medical Board at the Regional Office nearest to the residence of the employee and also further said that the employee should be given a personal hearing before issuing final order on the loss of lien on the post. The contention of the applicant that these aspects have not been complied with or accepted by the respondents when they rely on Education Code to their advantage. Apart from that under the head Voluntary Abandonment of Service, Clause 3 provides as follows :-

- (3) "In cases falling under Sub-Clause (1) of this Article, an order recording the factum of voluntary abandonment of service by the employee and provisional loss of his lien on the post, shall be made and communicated to the employee concerned at the address recorded in his service book and / or his last known address, to show cause why the provisional order above mentioned may not be confirmed."

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13. This Rule also mandates that the communication to the employee concerned should be made at the address recorded in his Service Book or his last known address. On going through the records submitted before us we find that no notice whatsoever has been issued by the respondents to the applicant on the address recorded in the Service Book. Naturally, it may be due to the fact that the respondents are fully aware that the applicant is not in India. Thereafter, on perusal of the records we found that the letter was addressed to the applicant at her London address i.e, 22 Robinson Road, West Norwood, London has been returned undelivered. In this context, it is pertinent to note that all correspondences by the respondents in London have been made to 22 Robinson Road, West Norwood, London SE 27 9 LA. But admittedly, vide letter dated 12.08.2000 the applicant had categorically requested the Assistant Commissioner, Chennai that " all further correspondence with her may kindly be made in the address given at the top of this letter" which reads as follows :-

Mrs.Indira Vinod,
C/o K.P.Vinodkrishnan
High Commission of India,
India House, Aldwych,
London, WC2B 4NA.

From the above, we are of the considered view that the applicant was not actually receiving the communication sent by the respondents. The respondents have no case that letter dated 12.08.2000 has not been received from the applicant, since a copy of which is very much on record. The contention of the respondents that this letter was received subsequently cannot be accepted. Therefore, evaluating evidence on record as to the communication of orders, we find that correspondences

are not being reached to the applicant because they were sent on a wrong address. Therefore, strictly speaking, the applicant was not in receipt of such communications which is in violation of Clause 3 of the Education Code.

14. The Apex Court while laying down ratio as to a valid service in a disciplinary proceedings in Union of India Vs. Dinanath Shantaram Karekar & Ors, reported as JT 1998 (6) SC 1, observed as under :-

"3. Respondent was an employee of the appellant. His personal file and the entire service record was available in which his home address also had been mentioned. The charge sheet which was sent to the respondent was returned with the postal endorsement "not found". This indicates that the charge sheet was not tendered to him even by the postal authorities. A document sent by registered post can be treated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities, and the registered cover was returned to the sender with the endorsement "not found" it cannot be legally treated to have been served. The appellant should have made further efforts to serve the charge sheet on the respondent. Single effort in the circumstances of the case, cannot be treated as sufficient. That being so, the very initiation of the departmental proceedings was bad. It was ex-parte even from the stage of charge sheet which at no stage, was served upon the respondent.

4. So far as the service of show cause notice is concerned, it also cannot be treated to have been served. Service of this notice was sought to be effected on the respondent by publication in a newspaper without making any earlier effort to serve him personally by tendering the show-cause notice either through the office peon or by registered post. There is nothing on record to indicate that the newspaper in which the show cause notice was published was a popular newspaper which was expected to be read by the public in general or that it had wide circulation in the area or locality where the respondent lived. The show cause notice cannot, therefore, in these circumstances, be held to have been served on the respondent. In any case, since the very initiation of the disciplinary proceedings was bad for the reason that the charge sheet was not served, all subsequent steps and stages, including the issuance of the show-cause notice would be bad.

5. Lastly, in order to save the lost battle, a novel argument was raised by the learned counsel for the appellant. He contended that since the charge sheet as also the show cause notice at different stages of the disciplinary proceedings were despatched and had been sent out of the office so that no control to recall it was retained by the department, the same should be treated to have been served on the respondent. It is contended that it is the communication of the charge sheet and the show cause notice which is material and not its actual service upon the delinquent. For this proposition, reliance had been placed on the decision of this Court in State of Punjab and others V. Balbir Singh etc. AIR 1977 SC 629.

6. This decision has been misread, misunderstood and is now being misapplied by the counsel for the appellants in the instant case.

7. As would appear from the perusal of the decision, the law with regard to "Communication" and not "Actual Service" was laid down in the context of the order by which services were terminated. It was based on a consideration of the earlier decisions in State of Punjab v. Khemi Ram, AIR 1970 SC 214, Bachhittar Singh v. State of Punjab, 1962 Supp. (3) SCR 713 = AIR 1963 SC 395, State of Punjab v. Amar Singh Harika, AIR 1966 SC 1313 and S Pratap Singh v State of Punjab (1964) 4 SCR 733 = AIR 1964 SC 72. The following passage was quoted from S. Pratap Singh's judgment (supra):-

It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority and, therefore, there would be no change whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, to matter when he actually received it.'

8. It was in this background that in cases where services are terminated or a person is dismissed from service, communication of the order and not its actual service was held to be sufficient. But this principle cannot be invoked in the instant case."

15. If the correspondence are not received by the applicant, the question is that whether the alleged inaction on the part of the applicant can be said to be wilful or not ? On perusal

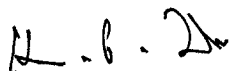
of the records submitted by the applicant, we find that when the applicant applied for 'No Objection Certificate', she expressed her intention of going to London to join her husband and it was made specific that the period of stay abroad is for three years and then regularly she was sending leave applications with authenticated medical certificate issued by the Embassy Doctor. On going through the averments and evidence on records (copies of medical certificate etc. Annexures A-7, A-8a, A-10c) it is clear that the applicant was reported to be sick and was suffering from bleeding/miscarriage. The respondents have no case that the applicant was not sending her leave applications regularly which is borne out from the original records submitted by them before this Court. The fact that the applicant was sick had therefore, been accepted by the respondents. If the respondents were not satisfied with the medical certificates sent by the applicant, respondents should have directed the applicant to report before the Medical Board. Such a recourse has not been adopted in this case. The logical conclusion is that the illness of the applicant has been reported and accepted by the respondents. It is a fact that the applicant had gone to London which has been intimated to the respondents at the initial stage. The applicant could possibly be sick which is supported by documentary evidence. Therefore, we are of the view that the applicant's absence cannot be said to be wilful. Even according to the Education Code, relied on by the respondents, they have not complied with the provisions. As per this Code, passing a considered order in writing regarding rejection of leave, is necessary. Not making the

correspondence to the applicant in the last known address or in the correct furnished address and not referring the matter to the Medical Board in the event that the applicant's illness is again suspected will definitely draw an adverse view on the decision of the respondents. On consideration of all the aspects of the matter, we are of the view that the impugned orders Annexures A-12 , A-14 and A-16 are not in conformity with the provisions of Education Code and therefore, they are to be set aside. We accordingly set aside Annexure A-12 dated 30.07.2001, Annexure A-14 dated 29.11.2002 and Annexure A-16 dated 25.03.2003 as they are not in conformity with the articles of Education Code of Kendriya Vidyalaya Sangathan.

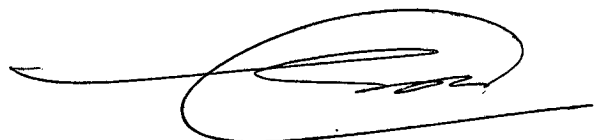
16. For all the reasons stated above, we set aside the impugned orders referred to above and direct the respondents to grant all consequential benefits to the applicant. The respondents shall reinstate the applicant forthwith and be posted either at Ottapalam or any other nearby place where the vacancy is available and take steps to regularise her leave by granting without pay. We make it clear that the applicant will not be entitled for any monetary benefits during the absented period.

17. The Original Application is allowed as above. No order as to costs.

Dated, the 29th October, 2004.



H.P.DAS
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

vs